

**Office of Chief Counsel
Internal Revenue Service
memorandum**


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Third Party Communication: Non Profit
Organization
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subject: Use of AAMVA to Transmit Heavy Highway Vehicle Use Tax Information to State
Departments of Motor Vehicles

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Can the IRS contract with the American Association of Motor Vehicle Administration ("AAMVA") to transmit Heavy Highway Vehicle Use Tax payment information to states' Departments of Motor Vehicles ("DMV") via a host connection when AAMVA is a third-party, non-profit organization and the taxpayer has consented to such a disclosure?

CONCLUSION

Yes. Pursuant to IRC § 6103(c) and Treasury Regulation § 301.6103(c)-1(b) the IRS may use AAMVA to transmit Heavy Highway Vehicle Use Tax payment information to state DMV offices provided the taxpayer has executed the proper consent to disclose this information. This program, however, raises various policy concerns and legal hazards.

FACTS

1. The Heavy Highway Vehicle Use Tax and The IRS' Current Reporting Procedure

IRC § 4481(a) prescribes, subject to statutory exemptions, an excise tax ("Vehicle Excise Tax") on the use of registered highway motor vehicles having a taxable gross

weight of at least 55,000 pounds.¹ As a prerequisite to vehicle registration, states are required to have taxpayers produce evidence that they have paid the Federal Vehicle Excise Tax. 23 U.S.C. § 141(a)(c), 23 CFR § 669.7. States then must certify the enforcement of that prerequisite in order to receive Federal-aid highway funds. 23 U.S.C. § 141(c).

Vehicle Excise Taxes are paid by filing a Form 2290, Heavy Highway Vehicle Use Tax Return. Treas. Reg. § 41.6011(a)-1(a) and (b). Prior to August 2007, these forms were submitted manually through the United States Postal Service or an approved third-party carrier. When a taxpayer pays the Vehicle Excise Tax through this process the IRS stamps Schedule 1 of Form 2290 and sends it back to the taxpayer. The taxpayer then presents the stamped Schedule 1 to the appropriate DMV to demonstrate payment of the Vehicle Excise Tax.

As of August 2007, Form 2290 may be submitted electronically.² When filed electronically the IRS will provide an electronic copy of Schedule 1 back to the taxpayer containing a watermark that may be printed to show receipt of payment. The electronic copy is transmitted to the taxpayer through the transmitter or software provider used by the taxpayer to electronically file the return. The watermarked printout is presented by the taxpayer to the DMV and is accepted as an equivalent to a stamped Schedule 1.

Also in August 2007, Form 2290 was changed to allow taxpayers to voluntarily consent to the IRS' disclosure of their Vehicle Excise Tax payment to the federal Department of Transportation, U.S. Customs and Border Protection, and to state DMVs. If the consent is executed these entities may receive the taxpayer's Vehicle Identification Number ("VIN") and verification that the Vehicle Excise Tax has been paid. The IRS maintains Vehicle Excise Tax payment information in two databases, one for taxpayers who have executed the voluntary consent ("Consent Database") and one for those who have not provided their consent.³ Currently there is no means by which states can electronically access the Consent Database, nor is there currently any communication between the IRS and the states regarding verification of Vehicle Excise Tax payments despite consents to do so.

The disclosure consent and electronic Form 2290 are currently signed electronically under a PIN-based pilot project. There are two approved methods for taxpayers to electronically sign Form 2290 and its accompanying consent. The first approved

¹ The taxable gross weight includes the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle. IRC § 4481(a).

² Electronic submission of Form 2290 was started as a means to satisfy the Congressional mandate in the American Jobs Creation Act of 2004. See ELECTRONIC EXCISE TAX (FORMERLY ETEC)- FREQUENTLY ASKED QUESTIONS (FAQS), available online at <http://www.irs.gov/efile/article>. Electronic filing is mandatory for a taxpayer who files a Form 2290 for 25 or more vehicles for any taxable period. *Id.*, IRC § 4481(e).

³ These databases are covered by the system of records notice "Treasury/ IRS 42.002, Excise Compliance Programs" which was published at 71 Fed. Reg. 65570-65571 (Nov. 8, 2006).

method allows a return preparer to enter a PIN onto Form 8879-EX, IRS *e-file* Signature Authorization for Forms 720, 2290, and 8849, to effectuate an electronic signature for a taxpayer. Under the second approved method a return preparer has a taxpayer sign Form 8453-EX, Excise Tax Declaration for an IRS *e-file* Return, then uploads that signature to a PDF file sent electronically with Form 2290 to the IRS. In May 2007, a temporary pilot project allowing a PIN-based electronic signature directly from the taxpayers, without the use of a return preparer, was commenced as an alternative to a PDF signature or a return preparer PIN. The pilot project is still ongoing.

2. Proposal to Use an AAMVA Host Connection

The Small Business and Self Employed Operating Division is exploring with AAMVA the possibility of having AAMVA establish a host connection between the IRS' Consent Database and state DMVs. AAMVA is a nonprofit organization that provides a central location for states to electronically access a variety of information including, but not limited to, motor vehicle registration. Currently all 50 states plus the District of Columbia use AAMVA in some capacity. As we understand the proposal, the connection provided by AAMVA would piggyback on AAMVA's current network connection with the states and link the IRS' Consent Database to those other databases already made available to states through AAMVA. AAMVA's current setup with the states uses a private system to system network by which the states can access information. The information AAMVA has available to the states is not stored on the internet and cannot be accessed via the internet. Furthermore, AAMVA requires the states to have a driver's license number or name for an individual to access that individual's information on the private network. The system to system connection does not permit states to access other states' databases without relevant information about an individual. Thus, for example, the DMV in California could not scroll through the database of the DMV in Virginia via the AAMVA connection.

The process for accessing the IRS' Consent Database would be as follows: states would access the IRS' Consent Database through a private connection with AAMVA, input a vehicle's VIN, and then receive either a yes or no response from the system indicating whether the tax has been paid with respect to that vehicle. No other return information would be disclosed and the database would only provide information if the taxpayer consented to the disclosure. AAMVA would provide the pipeline to deliver information, it would not provide a database to store information, and its staff would not have access to the return information transmitted through the host connection.

The vision of the host connection is to alleviate the need for each state to individually establish a separate connection with the IRS' Consent Database and to speed up the current process of sending a receipt to the taxpayers. State DMVs would be able to tap into the IRS' Consent Database and receive a yes or no answer denoting whether Vehicle Excise Tax has been paid with respect to a particular vehicle, eliminating the need for the taxpayer to wait for and to present a stamped Schedule 1.

LAW AND ANALYSIS

1. Disclosure of Return Information to Third Parties Under IRC § 6103(c)

Generally, unless a statutory exception has been met, tax returns and return information are confidential. IRC § 6103(a). No provision of the IRC authorizes disclosure to state DMVs or to AAMVA. The fact of payment (or non-payment) of the Vehicle Excise Tax with respect to a specific vehicle is the return information of the taxpayer liable for payment of that vehicle's Excise Tax. A third party may be designated to receive return information only if the taxpayer properly executes a consent authorizing such disclosure of the return information. IRC § 6103(c), Treas. Reg. § 301.6103(c)-1(b). A consent to disclose return information to a third party designee must be a separate document, signed and dated by the taxpayer and indicate the following: 1) the taxpayer's identity; 2) the identity of the third-party designee; 3) the type of return or return information that is to be disclosed; and 4) the taxable year or years covered by the return or return information. Treas. Reg. § 301.6103(c)-1(b)(1). To be honored by the IRS the consent must be received by the IRS within 60 days of being signed and dated by the taxpayer. Treas. Reg. § 301.6103(c)-1(b)(2).⁴

There is no statutory restriction as to who a taxpayer may designate to receive return information. Additionally, there are no restrictions as to what the designee may do with the taxpayer's information when it is received pursuant to a valid consent. If taxpayers voluntarily authorize the IRS to disclose to AAMVA their Vehicle Excise Tax payment information, there are no legal restrictions to doing so as long as the consent adheres to the regulatory requirements above.

2. The Use of Consent Based Programs

This office has historically disfavored programmatic consent based disclosures. The statutory design of IRC § 6103 is to make all return information confidential and to permit disclosure only in specified situations. Using consents to make programmatic disclosures tends to circumvent Congress' carefully crafted disclosure authorizations. The Treasury is of similar opinion regarding the very limited use of consent disclosures. In that regard, the Treasury would prefer Congress enact specific exceptions to the general policy of nondisclosure under IRC § 6103 rather than circumventing the policy by use of IRC § 6103(c) consent based disclosure programs. Office of Tax Policy Department of Treasury Report to Congress on Scope and Use of Taxpayer Confidentiality and Disclosure Provisions, page 73, (2000).

Here, there are two strong arguments why a consent based disclosure program should be used with AAMVA irrespective of the general policy to be cautious of such programs. First, there is clear Congressional intent for DMVs to receive taxpayer Vehicle Excise Tax payment information. As discussed above, states must certify that the Vehicle Excise Tax on applicable vehicles has been paid prior to registration in order to receive

⁴ Disclosure pursuant to a valid consent is discretionary under IRC § 6103(c) but is prohibited if such disclosure would seriously impair Federal tax administration.

Federal-aid highway funds. 23 U.S.C. § 141(c). While Congress enacted the legislation authorizing DMVs to check Vehicle Excise Tax information, they did not specify the means to do so, nor did they enact an exception to IRC § 6103 authorizing DMVs to receive that information directly from the IRS. With no specific exception authorizing the dissemination of payment information to DMVs, the Service had to rely on taxpayers delivering payment information to DMVs personally, or establish a consent based program allowing the Service to communicate directly with the DMVs on behalf of taxpayers. Therefore, a consent based program is one of the few alternatives the Service has to carry out the Congressional goal of disseminating payment information to state DMVs.

The second argument in favor of a consent based program, to transmit Vehicle Excise Tax payment information, is the improved service to taxpayers such a program provides. Payers of Vehicle Excise Tax are predominantly truck drivers. A consent program designed to allow those drivers to have their Vehicle Excise Tax payment information sent by the IRS directly to state DMVs may better meet the drivers' business needs than a program that requires those drivers to wait for a receipt of payment and then physically deliver the receipt to the DMV. It is plausible to think that some states may eventually offer online registration in light of being able to receive Vehicle Excise Tax payment verification electronically. Such a program would alleviate any need for a taxpayer/driver to go into a physical DMV.

3. Disclosure of Information Under IRC § 6103(d) is Not an Option

Under IRC § 6103(d) return and return information may be disclosed, without taxpayer consent, to any state agency, body, or commission, or its legal representative, which is responsible for administering the state tax laws. This section is inapplicable and may not be used to grant AAMVA access to taxpayer information. First, states verify payment of the Vehicle Excise Tax to enforce a Federal tax law, not a state tax law. Furthermore, AAMVA does not qualify as a state legal representative. Although AAMVA may contract with states to transmit return information, the information is not always going to a state agency that administers state tax laws. Rather, the information is going to states' DMVs which are not always under the Taxing Authority of a state. AAMVA therefore does not qualify to receive return information under IRC § 6103(d) because all DMVs are not administered under all states' Tax Authority and because the Vehicle Excise Tax is a Federal tax law.

HAZARDS AND POLICY CONSIDERATIONS

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Pages 6 and 7 withheld in full; deliberative process privilege